

SIKKIM



GOVERNMENT

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**GOVERNMENT OF SIKKIM
LEGAL METROLOGY UNIT AND CONSUMER PROTECTION CELL
FOOD AND CIVIL SUPPLIES DEPARTMENT
GANGTOK – 737101**

No. 18/LMU/FCS&CA

Dated: 17.10.2022

NOTIFICATION

Whereas, in compliance with the directives of the Ministry of Consumer Affairs, Food and Public Distribution, Government of India vide Notification GSR No. 1013(E), dated 26th October 2016, the State Government had issued the Sikkim State Direct Selling Guidelines, 2017 vide Notification No. 11/LMU&CP/FCS&CA dated 24th October 2017,

And whereas, the State Government has been entrusted with the responsibility to notify "Monitoring Mechanism" to screen genuine and ethical entities and to weed away entities running ponzy and pyramid schemes;

And whereas, the State Government has deemed it expedient to vest the added and subsequential responsibility to notify "Monitoring Mechanism";

Now therefore, the State Government hereby makes the following guidelines to amend the Sikkim Direct Selling Guidelines, 2017, namely: -

Short title extent and commencement	1. (1) These guidelines may be called the Sikkim State Direct Selling (Amendment) Guidelines, 2022.
	(2) They shall extend to the whole of Sikkim.
	(3) They shall come into force on the date of their publication in the Official Gazette.

Substitution of clause 10	In the Sikkim Direct Selling Guidelines, 2017 (hereinafter referred to as the "said guidelines"), for the existing clause 10, the following clause shall be substituted, namely:-
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"10. (1) The Nodal Department to deal with the issues related to Direct Selling shall be Department of Consumer Affairs at the Union and in the State of Sikkim shall be under Department of Food and Civil Supplies,

- (1) The Department of Food and Civil Supplies shall set up a Monitoring Authority to monitor or screen or supervise the activities of Direct Sellers, Direct Selling Entity regarding compliance of the Guidelines for Direct Selling;
- (2) The Department of Food and Civil Supplies shall take punitive action against Direct Selling Entities and their Direct Sellers for violation of these guidelines with respect to provisions laid down in Consumer Protection Act and/or Legal Metrology Act, 2009 and rules framed thereunder."

Insertion of new
clauses.
Composition

2. In the said guidelines, after clause 10, the following new clauses shall be inserted, namely: -

11. (1) Composition of Monitoring Authority or Committee. The Monitoring Authority or Committee shall consist of: -

- (a) Secretary of Department of Food and Civil Supplies as the Chairperson;
- (b) Additional Controller or any other officer not below the rank of Joint Secretary or Joint Controller, Legal Metrology and Consumer Protection Cell, duly nominated by the Chairperson as the "Nodal Officer" and "Convener" respectively;
- (c) The Secretary to the Government of Sikkim in the Finance Department or any other office nominated by him not below the rank of Deputy Secretary as the member;
- (d) Financial Commissioner, Taxations or Taxation Commissioner, GST as the member;
- (e) Additional Director General of Police (ADGP) rank officer from the Police Department dealing with Economic Offences as the member;
- (f) One Subject Expert duly nominated by the Government as the member;

(2) The Monitoring Authority shall meet as and when necessary but at least one meeting shall be convened in every three months.

Objectives

12. The Monitoring Authority shall function with the following objectives, namely:-

- (a) to regulate the business of Direct Selling or Multi-Level Marketing as per the State guidelines to prevent fraud and protect the legitimate rights and interests of consumers;
- (b) to monitor or supervise the activities of Direct Sellers, Direct Selling Entity regarding compliance to the State Guidelines;
- (c) to implement the guidelines.

Roles and
Responsibilities

13. Responsibilities of the Monitoring Authority or Committee shall be as following, namely: -

- (1) (a) to provide facilities for the enrolment of Direct Selling Entities for carrying out their Direct Selling or Multi-Level Marketing business in the State of Sikkim;
- (b) to provide appropriate platform for receiving complaints from the Consumers or Direct Sellers including general public against the violation of State Guidelines by the Direct Selling Entities;
- (c) to inform respective enforcement authorities regarding the unethical and unlawful practice, if any, carried out by direct selling entities or direct sellers including non-compliance or evasion of tax laws, noticed by the Monitoring Authority;
- (d) to provide Policy inputs to the Central Government for appropriate modifications in the State Guidelines, if warranted, from time to time;
- (e) to provide Confidence Building Measures among law enforcement authorities, consumers, direct sellers and the general public and impart education and training regarding the "Do's and Don'ts of Direct Selling or Multi-Level Marketing" by the Department of Food and Civil Supplies or any such institute recognized for the purpose by State Government";
- (f) other responsibilities as may be specified by the State or Central Government in accordance with the State Guidelines;
- (2) If any violation committed by a Direct Selling Entity falls under the jurisdiction of the Centre Government or other State Government, action shall be governed by such Acts or Rules applicable under the said jurisdiction by their designated authorities. The Monitoring Authority or Committee in such case shall inform Centre or other State Government accordingly.

Action against
violation of
guidelines

14. The Monitoring Authority or Committee may either Suo-motu or on the report filed by the designated officers, take action against Direct Selling Entities violating the State Guidelines. The Monitoring Authority, may: -

- (a) issue show cause notice to those companies violating the State Guidelines, and to companies which failed to enrol with the Monitoring Authority;
- (b) call for information from Direct Selling Entities when it is expedient to do so;
- (c) engage one or more persons to conduct an inquiry in relation to the affairs of any Direct Selling Entity;
- (d) call upon the books of accounts, registers, certified copies of mandatory registration certificates as per the State Guidelines or other documents for necessary verification and examination in such circumstances as required by the Monitoring Authority;

- (e) direct the Direct Selling Entity to take corrective steps if violation of State Guidelines is committed by entity itself or by their duly appointed Direct Sellers;
- (f) cancel the enrolment or bar those Direct Selling Entities violating the State Guidelines repeatedly even after show cause notices and warnings by the Monitoring Authority;

Periodical Reports 15. Filing of Periodical Reports before the Monitoring Authority: Every Direct Selling Entity must furnish reports with the following information and submit to the Monitoring Authority within 20/45 days from the end of each such quarter or financial year respectively:

- (a) yearly basis:
 - (i) details of training imparted to the Direct Sellers;
 - (ii) individual wise particulars maintained by the Direct Selling Entity in respect of their direct sellers including but not limited to enrolment, termination, activity status, purchase value, remuneration paid in the last financial year;
 - (iii) copy of GST returns, Income Tax returns including TDS returns of the last year;
 - (iv) details of the change or substitution in the constitution of the Direct Selling Entity, its address, its details related to website, and/or its shareholding;
 - (v) details of any change in the business plan of the Direct Selling Entity;
 - (vi) any other particulars, if found necessary by the Monitoring Authority.
- (b) quarterly basis:
 - (i) total number of complaints received from customers within the State and the total numbers redressed and pending status in the last quarter;
 - (ii) total number of complaints received from Direct Sellers within the State and the total numbers redressed and pending status in the last quarter;
 - (iii) any other particulars if required by the Monitoring Authority.

Disposal of Complaints

16. Procedure for disposal of complaints shall be as follows namely:-

- (a) Department shall designate officers at district level to receive complaints;
- (b) a direct seller or consumer or any member of the general public whose grievance has not been resolved within 30 days of its receipt by the grievance redressal committee of the Direct Selling Entity may file complaint in writing along with necessary details before the designated officer;

- (c) every complaint against the compensation plan which conflicts with any of the provisions of the guideline must be submitted along with a valid document published by the Direct Selling Entity and clear mentioning of the relevant provisions;
- (d) the designated officer may entertain complaints only after the expiry of 30 days of its original complaint received by the grievance redressal committee of the Direct Selling Entity and only if such grievance redressal committee fails to take redressal action on it;
- (e) Monitoring Authority shall give a reasonable opportunity of being heard to the Direct Selling Entity before taking action, if any against such entity;

Application of other
Law

17. The provision contained in clause 5 shall be in addition to and not in derogation of provisions contained in other laws. The Direct Selling Entities and the Direct Sellers have to follow the Sikkim State Direct Selling Guidelines, 2017, issued vide Sikkim Government Gazette No. 521. dated October 27, 2017 meticulously. The violation of the State Guidelines shall be dealt appropriately by the Monitoring Authority. Any direct selling activity in violation of the State Guidelines shall be dealt appropriately by the Law Enforcement Authorities under the provisions of the appropriate Acts and rules, which may include the following: -

- (a) violation relating to products/services to be filed before the appropriate Consumer Forum, having the jurisdiction under the Consumer Protection Act, 2019;
- (b) violation relating to any activity leading to money circulation or pyramid/ponzy schemes to be dealt with under Prize Chits and Money Circulation Scheme (Banning) Act, 1978, including criminal case under Indian Penal Code;
- (c) violation relating to taxation laws to be dealt with by the respective Taxation Authorities under the respective Taxation Statutes;
- (d) violation relating to Legal Metrology Act, 2009;
- (e) violation relating to the Consumer Protection Act, 2019;
- (f) violation relating to Economic Offences mentioned in various relevant Acts;
- (g) violation under any other applicable laws is to be dealt with by the respective Authorities under such respective Statutes;
- (h) civil remedies for breach of contract.

Maintenance of
Records

18. The Direct Selling Entities shall maintain the following documents/ records (Ready information file) either manually or electronically at the registered office of the Entity including office of operation within the State:-

- (a) certificate issued by Registrar of Companies, Memorandum of Association (MoA), Articles of Association (AoA);

- (b) copies of Taxpayer Identification Number (TIN), Director Identification Number (DIN) of Directors, Tax Deduction Account Number (TAN) and Permanent Account Number (PAN);
- (c) copies of Licenses/Permits required for the trading of goods/ services issued by the local authority or any other authority as the case may be;
- (d) certificate of Sales Tax, Service Tax and SCT Registration (Earlier years);
- (e) Sales Tax/VAT Returns filed with the authorities (Earlier Years);
- (f) Service Tax Returns filed with the authorities (Earlier years);
- (g) GST Returns filed with the authorities (Earlier years);
- (h) IT Returns of the company filed with the authorities;
- (i) Tax deducted at Source (TDS) Statements of Distributors and respective challans paid;
- (j) Copy of the latest balance sheet, profit and loss account and reports of the auditors or directors of the applicant;
- (k) Records of Know Your Customer (KYC) and Know Your Direct Sellers (KYDC), the formats of which should be available on the company website;
- (l) register of Direct Sellers and Grievance Redressal Register;
- (m) copies of Product/Services marketing Brochure;
- (n) copies of Enrolment Application for new members/Direct Sellers along with the Agreement;
- (o) copy of duly filled Undertaking in the prescribed format filed with the Department along with copy of acknowledgment of receipt of application by the Departments;

Power of Entry and Search into Premises of Direct Selling Entity or Direct Seller

19. If any violation of guidelines takes place. - The Enforcement Officer not below the rank of Food Supply Officer may with the view of securing compliance with these Guidelines or to satisfy himself that the Guidelines have been complied with:
- (a) inspect or cause to be inspect;
 - (b) require any person to give any information in his possession about the goods/ services of the Direct Selling Entity/Direct Seller;
 - (c) stop and search forthwith, with such aid or assistance as may be necessary;
 - (d) enter and search, with such aid or assistance as may be necessary;
 - (e) the Food and Supply Officer shall submit the enquiry report before the District Controller of Food, Civil Supplies of the concerned district;

- (f) the Food and Supply Officer shall exercise power of inspection, seizure etc. for violation of these guidelines with respect to provision related to Consumer Protection Act, 2019 and Legal Metrology Act, 2009 and rules framed there under;
- (g) the provision of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) relating to such search shall so far as be, apply to searches under the guidelines;

Appeal

20. Any person aggrieved by any action taken/ orders passed by Food and Supply Officer, may prefer an appeal before the District Controller within 30 days of the receipt by him/her of such order.

Explanation: Receipt of order shall be deemed to have been received, on delivering or transmitting a copy thereof to such aggrieved person or his agent by ordinary or speed post, courier services, fax messages, electronic mail services or any other prevailing mode of service.

Revision

21. Any person aggrieved by an order passed by the District Controller may prefer revision application before the Director within 30 days from the date of communication to him/her of such order.

Explanation: Receipt of order shall be deemed to have been received, on delivering or transmitting a copy thereof to such aggrieved person or his agent by ordinary/speed post, courier services, fax messages, electronic mail services or any other prevailing mode of service.

- (1) Pending disposal of the revision petition, the State Government may direct that the order under revision shall not have effect until the same is disposed off.

Miscellaneous

22. Orientation Session or Training – Every Direct Selling Company or Multi-Level Marketing Company shall conduct a mandatory Orientation Session for all of its members or Direct Sellers or Independent Representatives providing precise and accurate information on aspects of direct selling operations, including the remuneration system and mode of its disbursements. The Direct Selling Guidelines of Sikkim, 2017 and the Legal Metrology Act, 2009, the Consumer Protection Act, 2019 released by the Department of Consumer Affairs, Government of India shall be incorporated in the training curriculum of Orientation Session conducted by all Direct Selling or Multi-Level Marketing Companies as mandatory Session.”

**Deepa Rani Thapa, SCS,
Secretary to the Government of Sikkim,
Food and Civil Supplies Department**

